

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Richard D. Tatham	)	Facility I.D. No. 56171
Licensee of Station K36DU	)	NAL/Acct. No. 0841420029
Lake Havasu City, Arizona	)	FRN: 0005093430

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: March 3, 2008****Released: March 4, 2008**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Richard D. Tatham (the “Licensee”), licensee of Station K36DU, Lake Havasu City, Arizona (the “Station”), apparently willfully violated Section 73.3539(a) of the Rules, by failing to file the Station’s license renewal application in a timely manner.<sup>3</sup> Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500).

**II. BACKGROUND**

2. Section 73.3539(a) of the Rules provides that a license renewal application shall be filed by the first day of the fourth full calendar month before the expiration date of the license to be renewed.<sup>4</sup> Thus, license renewal applications for stations located in Arizona were due to be filed no later than June 1, 2006, four months prior to the October 1, 2006 expiration date.<sup>5</sup>

3. On July 18, 2006, the Licensee filed its license renewal application (FCC Form 303-S) for Station K36DU (the “Application”) (File No. BRCT-20060718AAE). As stated above, license renewal applications for stations located in Arizona were due to be filed by June 1, 2006, four months prior to the October 1, 2006 expiration date. The Application for Station K36DU was filed on July 18, 2006, more than one month after the due date. The Application provides no explanation for the untimely filing.

**III. DISCUSSION**

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<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3539(a).

<sup>4</sup> See 47 C.F.R. § 73.3539(a).

<sup>5</sup> See 47 C.F.R. §§ 73.1020(a)(13)(ii), 73.3539(a).

4. The Licensee's failure to file its Application in a timely manner constitutes a willful violation of Section 73.3539(a) of the Rules. This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>6</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>7</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>8</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>9</sup> Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."<sup>10</sup>

5. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$3,000 for failure to file a required form.<sup>11</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>12</sup>

6. In this case, the Licensee failed to file the Application for the Station in a timely manner. We also note, however, that the Application was filed prior to expiration of the Station's license. Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$1,500 for its apparent willful violation of Section 73.3539(a).

#### IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Richard D. Tatham is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of one thousand five hundred dollars (\$1,500) for its apparent willful violation of Section 73.3539(a) of the Commission's Rules.

8. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Richard D. Tatham SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

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<sup>6</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>7</sup> 47 U.S.C. § 312(f)(1).

<sup>8</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>9</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>10</sup> 47 U.S.C. § 312(f)(2).

<sup>11</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>12</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

9. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank-Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code).

10. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>13</sup>

13. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Richard D. Tatham, 2141 Bryce Drive, Lake Havasu City, Arizona 86404, and to its counsel, Joan Stewart, Esquire, Wiley Rein LLP, 1776 K Street, N.W., Washington, D.C. 20006.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau

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<sup>13</sup> See 47 C.F.R. § 1.1914.